

BULLETIN

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SUPREME COURT AMENDS CODE OF JUDICIAL CONDUCT

On June 8, 2004, the Arizona Supreme Court approved amendments to the Code of Judicial Conduct giving judges more latitude in responding to questions about their personal and political views during judicial elections. The amendments are the direct result of the U.S. Supreme Court's decision in *Republican Party of Minnesota v. White*, which held that the so-called "announce clause" in the Minnesota Code of Judicial Conduct violated the First Amendment. Under this provision, candidates in judicial elections and incumbent judges were prohibited from announcing their views on disputed political or legal issues.

Both the Minnesota and Arizona codes contained similar language, and it was clear early on that the Arizona version would have to be amended to conform to the Supreme Court's decision. With this in mind, the Judicial Ethics Advisory Committee petitioned the state supreme court last December to remove the "announce clause" in Canon 5B(1)(d)(iv) and to amend other related sections of the code. The committee also recommended:

- Adding a definition of "impartiality" to the terminology section;
- Including an explanation of "judicial integrity" in the commentary to Canon 1A;
- Clarifying when judges can provide written recommendations or initiate communications with sentencing judge as described in the commentary to Canon 2B;
- Explaining when judges may speak to discharged juries under Canon 3B(11); and
- Expanding the commentary in Canon 3E(1) relating to disqualification when complaints are filed against judges.

The committee originally planned to review the entire judicial code, but decided to limit the scope of its work after learning that the American Bar Association had created a national commission to evaluate the 1990 ABA Model Code upon which the Arizona code is based. The ABA commission is moving ahead rapidly and expects to present its recommendations to the association's House of Delegates at its mid-year meeting in February 2005.

The complete text of the amended Arizona code can be found on the judicial ethics website at www.supreme.state.az.us/ethics. Although the advisory committee no longer distributes printed copies of the code to judges, those who want hard copies can obtain them directly from the website. The court's order, which highlights the changes in the judicial code, can also be viewed at the website.

NEW COMMISSION RULES

The Arizona Supreme Court has approved amendments to the Rules of the Commission on Judicial Conduct. The commission proposed the amendments last December in a petition that was widely circulated to the bench and bar for comment in the spring of this year. The new rules became effective on June 8, 2004.

Most of the amendments are designed to clarify existing rules and procedures. In Section C of the rules, for example, the term “preliminary measures” was changed to “disciplinary remedies,” a designation that more accurately reflects the fact that these particular disciplinary actions are remedial in nature and are not treated as sanctions. Advisory letters, diversion programs and consultation with individual judges all come under the heading of disciplinary remedies and do not involve informal or formal sanctions.

In addition, the new rules clarify the duties of the presiding members of hearing panels and expand their authority to supervise formal proceedings. Presiding members are now authorized to sign case management orders establishing deadlines for various procedures and can order parties in formal proceedings to participate in settlement conferences. In the past, judges were encouraged to participate in settlement conferences, but there were no rules governing this process.

From a procedural standpoint, the most significant change is the simplification of the appeal procedure in Rule 28. Under the old rule, a judge could file objections to a hearing panel’s recommendations directly with the panel and then again with the supreme court at a later stage in the proceedings. Under the new rule, a judge may file a motion for reconsideration of the findings of fact directly with the hearing panel, but objections to the recommendations can be filed only with the court. This change will significantly reduce the time it takes to get a case in front of the court.

You can read the complete text of the new commission rules on the judicial ethics website at www.supreme.state.az.us/ethics. The court’s order amending the rules and highlighting the changes can be viewed at the same location.